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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
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13 MARC OPPERMAN, et al.,
14 Plaintiffs,
15 vs.
16 PATH, INC., et al.,
17 Defendants
18

Case No. 13-cv-00453-JST

**DEFENDANT INSTAGRAM, LLC'S
ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED
(CIVIL L.R. 3-12 & 7-11)**

This Document Relates to Case No. 13-
cv-00453-JST Only

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that defendant Instagram, LLC (“Instagram”), by and through its undersigned counsel, hereby submits this administrative motion seeking an order relating the putative class action captioned *Gutierrez v. Instagram, Inc.*,¹ Case No. 12-cv-06550-JST (“*Gutierrez*”), to the earlier-filed putative class action *Opperman v. Path, Inc. et al.*, Case No. 13-cv-00453-JST (“*Opperman*”), pursuant to Civil Local Rules 3-12 and 7-11, and the Court’s May 17, 2013 Case Management Order (“Order”). For the Court’s convenience, the *Opperman* Second Amended Class Action Complaint is attached as Exhibit A to the Declaration of Mazda K. Antia i/s/o Instagram LLC’s Administrative Motion to Consider Whether the Cases Should Be Related (“Antia Decl.”), and the *Gutierrez* First Amended Class Action Complaint is attached as Exhibit B to the Antia Decl.

I. INTRODUCTION

Instagram develops and markets a popular photo-sharing social-media application (the “Instagram App”) for mobile devices. On March 12, 2012, plaintiffs in *Opperman* filed a putative class action complaint alleging a nationwide class of mobile device users who downloaded certain applications (“app(s)”), including the Instagram App. The *Opperman* plaintiffs allege that after installation and sign-in, the Instagram App unlawfully accessed data in their devices’ address book. Plaintiffs seek to certify a class of all persons who downloaded the Instagram App (among others) to their Apple device. On May 3, 2013 plaintiffs in *Gutierrez* filed a First Amended Class Action Complaint against Instagram, alleging similar improper accessing of address book data stored in plaintiffs’ mobile devices. The *Gutierrez* plaintiffs also seek certification of a similar nationwide class of mobile device users who downloaded the Instagram App from October 2010 to February 28, 2012. Pursuant to the Court’s May 17, 2013 Order, Instagram is filing this administrative motion to relate the *Gutierrez* and *Opperman* actions, which concern substantially the same parties, transactions, and events, and pose the

¹ On August 31, 2012 Instagram, Inc. ceased to exist in connection with Facebook, Inc.’s acquisition of the company. Instagram now does business as Instagram, LLC. (See Dkt. No. 119.)

1 potential for unduly burdensome duplication of labor and expense if the cases are not related.²
 2 Specifically, both actions: (1) arise from the same core allegation that the Instagram App
 3 misappropriated users' contact data from their mobile devices' address book; (2) seek
 4 certification of overlapping classes; and (3) allege overlapping legal claims. Thus, judicial
 5 economy and the Civil Local Rules dictate that the two cases should be related. Defendant has
 6 contacted counsel for plaintiffs in *Gutierrez*, as well as counsel for plaintiffs and counsel for its
 7 co-defendants in *Opperman*. Counsel for the *Gutierrez* and *Opperman* plaintiffs have agreed that
 8 *Gutierrez* should be related to *Opperman*. See Antia Decl. ¶ 3. Counsel for the defendants in
 9 *Opperman* have not expressed any opposition to relation. *Id.*

10 **II. THE OPPERMAN AND GUTIERREZ ACTIONS SHOULD BE RELATED**

11 Under Civil Local Rule 3-12, actions are related when: “(1) [t]he actions concern
 12 substantially the same parties, property, transaction or event; and (2) [i]t appears likely that there
 13 will be an unduly burdensome duplication of labor and expense or conflicting results if the cases
 14 are conducted before different Judges.” All of these factors are met here.

15 **Same parties:** Instagram is a named defendant in both the *Opperman*³ and *Gutierrez*
 16 actions. The named plaintiffs seek to represent similar putative classes of Instagram users who
 17 allegedly downloaded the Instagram App to their mobile phones. Specifically, plaintiffs in
 18 *Opperman* propose a class of all persons who downloaded the Instagram App (among others) to
 19 their Apple device. (Ex. A, ¶ 46.) Similarly, plaintiffs in *Gutierrez* propose a class of all persons
 20 in the United States who downloaded the Instagram App to their mobile computing device. (Ex.
 21 B, ¶ 109.)

22 **Same “transaction” or “event” at issue:** The *Opperman* and *Gutierrez* actions each arise
 23 out of Instagram's alleged download, copying, and transmission of users' contact address book
 24 information from users' mobile phones, without notice or consent. (Ex. A ¶¶ 2, 5, 215-224; Ex. B
 25 ¶¶ 3-4, 16-23). Both allege that they downloaded the Instagram App through the App Store

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 27 ² Instagram believes the cases are not only related, but that they should also be consolidated and
 will be prepared to address this issue if the Court relates the cases and/or at the June 21, 2013
 Case Management Conference.

28 ³ *Opperman* also names Apple, Inc., and Facebook, Inc. as defendants.

1 operated by Apple, Inc. (“Apple”) and that Apple made representations that it would protect their
 2 personal information from misuse. (Ex. A ¶¶ 1, 3; Ex. B ¶¶ 52-53). Both actions allege that the
 3 relevant downloads occurred prior to February 2012. (Ex. A ¶ 1; Ex. B ¶ 39). Moreover, both
 4 actions also allege the following overlapping federal and state causes of action: invasion of
 5 privacy (Ex. A ¶¶ 202-212; Ex. B ¶¶ 293-297); conversion (Ex. A ¶¶ 305-308; Ex. B ¶¶ 196-201);
 6 trespass to property/chattels (Ex. A ¶¶ 152-171; Ex. B ¶¶ 309-313); unjust enrichment (Ex. A ¶¶
 7 417-422; Ex. B ¶¶ 213-227); the Computer Fraud and Abuse Act 18 U.S.C. § 1030 (Ex. A ¶¶
 8 344-354; Ex. B ¶¶ 120-130); and California Penal Code § 502 (Ex. A ¶¶ 379-390; Ex. B ¶¶ 131-
 9 151). Further, both actions raise similar questions of law, including whether plaintiffs suffered a
 10 concrete and particularized injury as required by Article III and certain of plaintiffs’ claims; and
 11 whether the claims can be proven through common proof, or will raise individualized issues that
 12 will prevent certification of the class.

13 **Potential for duplication of labor and conflicting results:** If the *Opperman* and
 14 *Gutierrez* actions are not related and are instead conducted separately, the actions will potentially
 15 result in unduly burdensome duplication of labor, cause Instagram great expense, and waste
 16 judicial resources. For instance, two separate, unrelated actions would resolve the same or similar
 17 issues relating to the putative class actions, discovery, class certification, dispositive motions, and
 18 trial, but without any coordination between those endeavors. In contrast, if *Gutierrez* is related to
 19 the *Opperman* action, the Court can coordinate motions, briefing schedules, case management
 20 hearings, and discovery between the actions. This more efficient approach is apparently
 21 envisioned by the Court itself, as its May 17, 2013 Order directs the parties in *Opperman*, and the
 22 parties in the two other actions already related to it, to meet and confer and attempt to reach
 23 consensus on these issues. (*See Opperman* Dkt No. 327 at p.3-4.) The *Gutierrez* action would
 24 benefit from similar synchronization, and thereby preserve both Court and party resources.

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III. CONCLUSION

For these reasons, Instagram respectfully requests that the Court grant this unopposed administrative motion and order that the *Gutierrez* action be related to the *Opperman* action.

Dated: May 29, 2013

COOLEY LLP

/s/ Mazda K. Antia

Mazda K. Antia

Attorney for Defendant INSTAGRAM, LLC